

J. W. BLOOM

IBLA 76-246

Decided March 30, 1976

Appeal from a decision of the Idaho State Office, Bureau of Land Management, rejecting oil and gas lease offer I-9537.

Reversed.

1. Oil and Gas Leases: Applications: 640-acre Limitation

The Department of the Interior will not reject an oil and gas lease offer for public domain lands solely for the reason of the offer being for less than 640 acres where the amount by which the offer is under 640 acres is less than the amount by which the offer would exceed 640 acres by including the smallest adjoining subdivision available for leasing.

APPEARANCES: Sheridan L. McGarry, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

On August 19, 1975, the Idaho State Office, Bureau of Land Management (BLM), rejected oil and gas lease offer I-9537 for the reason the offer was for a total of less than 640 acres of available land and was not within the exceptions contained in 43 CFR 3110.1-3(a). Oil and gas lease offer I-9537 included 636.08 acres.

On appeal, appellant asserts the Department will issue a lease for less than 640 acres under the "rule of approximation" as set forth in Natalie Z. Shell, 62 I.D. 417, 422 (1955), and recently followed in Kenneth D. Kirkland, 18 IBLA 349 (1975).

[1] The rule of approximation holds that an oil and gas lease may be issued in response to an offer for less than 640 acres, all else being regular, where the amount by which the offer is less than 640 acres is smaller than the amount by which inclusion of the smallest adjoining legal subdivision available for leasing would put the offer in excess of 640 acres. In the present case the

offer is for 636.08 acres, all section 1, T. 1 N., R. 41 E., B.M. The oil and gas plats for the township involved and for the adjoining townships show the smallest adjoining legal subdivision available for leasing to be lot 4, section 6, T. 1 N., R. 42 E., containing 18.76 acres. To require appellant to include this lot in his offer would result in an offer for 654.84 acres, 14.84 acres in excess of the regulatory minimum of 640. The offer, as filed originally, encompassed an area of 636.08 acres, only 3.92 acres less than 640.

Kenneth D. Kirkland, supra, states:

In Shell, the Department concluded that it was consistent with the oil and gas lease offer form and the regulations to apply the administrative "rule of approximation" to oil and gas lease offers containing less than 640 acres. Although the Department has changed the applicable regulations several times since Shell, the changes have not been substantive. The lease offer form, in pertinent part, remains unchanged. Because of the sound policy reasons expressed in Natalie Z. Shell, supra, we adhere to the rule in that case. Union Oil Co., A-29725 (September 17, 1963).

Applying the rule of approximation to the present case, we find that the amount by which lease offer I-9537 is under 640 acres is less than the amount by which the inclusion of the 18.76-acre subdivision would put the offer in excess of 640 acres. Accordingly we find merit in appellant's argument and we conclude that BLM erred in rejecting lease offer I-9537. Kenneth D. Kirkland, supra; Natalie Z. Shell, supra at 422.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded for action consistent with this decision.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Martin Ritvo
Administrative Judge

